STATE OF MICHIGAN

COURT OF APPEALS

SHAWN BRUCK and DAWN BRUCK,

Plaintiffs-Appellants,

v

ROCK D. LANGTON, d/b/a LANGTON CONSTRUCTION,

Defendant-Appellee,

and

WILLIAM SMITH and CAROLE L. SMITH,

Defendants.

UNPUBLISHED
September 18, 1998

No. 201495
Monroe Circuit Court
LC No. 96-004712 NO

Before: Whitbeck, P.J., McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the summary dismissal of their negligence action pursuant to MCR 2.116(C)(10). The trial court held that the exclusive remedy provision of the Worker's Disability Compensation Act [WDCA], MCL 418.131(1); MSA 17.237(131)(1), barred the action. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

To determine whether an individual is an employee under the WDCA rather than an independent contractor, a court must look to the statutory definition of employee, MCL 418.161(1)(n); MSA 17.237(161)(1)(n), and the economic reality test. *Amerisure Ins Cos v Time Auto Transportation, Inc*, 196 Mich App 569, 573; 493 NW2d 482 (1992); see *Hoste v Shanty Creek Management, Inc*, 221 Mich App 144, 148; 561 NW2d 106 (1997).

Application of § 161(1)(n) to the record reveals that plaintiff Shawn Bruck was not an employee of Daniel Langton, an alleged independent contractor. He assisted *defendant* Rock Langton

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* Circuit judge, sitting on the Court of Appeals by assignment.

and his crew in completing a roofing job defendant Rock Langton had contracted to do for defendants Smith. Plaintiff presented no evidence that (1) he maintained a separate business, (2) he held himself out independently as a person providing services to the public or (3) he was an employer subject to the WDCA. Accordingly, viewing the documentation supplied by the parties in a light most favorable to plaintiff, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), the documentation supports the trial court's conclusion that plaintiff was an employee of defendant Langton under § 161(1)(n) for purposes of the WDCA.

Plaintiff's claim that he was not an employee of defendant Rock Langton within the meaning of § 161(1)(n) is premised on an application of the statutory definition to *Daniel* Langton and not to plaintiff himself. Plaintiff's application of § 161(1)(n) is legally flawed. The test is to be applied to the injured claimant. *Hoste, supra* at 148.

Additionally, upon reviewing the entire record, we conclude that the trial court's finding under the economic reality test that plaintiff was an employee of defendant Rock Langton is supported by the record where the record indicates that plaintiff worked with defendant Rock Langton and his crew as a member of the crew towards the accomplishment of a single goal, where defendant Rock Langton reimbursed Daniel Langton for plaintiff's wages and the cost of insurance coverages for plaintiff, including worker's compensation insurance coverage, where defendant Rock Langton provided all of the materials and some of the equipment used at the job site and where defendant Rock Langton was the "boss" on the job site that decided what tasks needed to be performed to accomplish the goal he set for the crew. *Hoste, supra* at 149-153; *Amerisure, supra* at 575.

Affirmed.

/s/ William C. Whitbeck
/s/ Gary R. McDonald
/s/ Timothy G. Hicks